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SMYTH BROS.-McCLEARY-McCLELLAN CO. *v.* BERESFORD.

Sept. 16, 1920.

[104 S. E. 371.]

1. Contracts (§ 113 (3)*)—Agreement Held Not Illegal as Contract to Influence Government Officers.—An agreement for plaintiff to procure purchasers and contracts for horses at prices acceptable to defendants for a commission of \$5 per head held not illegal as a contract to exert personal influence with agents of foreign governments.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 244 et seq.]

2. Principal and Agent (§ 89 (10)*)—Modification of Instruction on Principal's Nonliability on Agent's Abandonment Held Proper.—In an agent's action for commission, an instruction relieving defendants from liability in case of plaintiff's abandonment of contract or failure to render agreed services was properly amended to except plaintiff's abandonment and failure due to defendant's obstruction or assent excusing plaintiff from performing.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 266 et seq.]

3. Principal and Agent (§ 89 (10)*)—Instruction on Entirety of Contract Held Proper.—In an agent's action for commission, an instruction that, if defendant's version was believed, the contract was entire, and not severable, and if plaintiff failed to discharge his undertakings unless hindered or relieved by defendants, they should find for defendants, held proper.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 266 et seq.]

4. Principal and Agent (§ 33*)—Contract May Be Terminated by Mutual Consent.—A principal may not, without cause, terminate, without the agent's assent, a contract to pay commissions on sales made through the agent's efforts, although the contract may be terminated by mutual consent.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 266 et seq.]

5. Trial (§ 253 (7)*)—Correct Statement of Hypothetical Situation Held Not Error.—In agent's action for commission on sale of horses, an instruction correctly stating the law on the hypothetical situation as presented held no error.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 266 et seq.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

6. Trial (§ 234 (7)*)—Instruction on Burden of Proof in Action for Commission Held Proper.—In an agent's action for commission on sale of horses, offered instruction on plaintiff's burden of proof, as amended by the court, held to submit case properly on the facts.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 266 et seq.]

7. Trial (§ 252 (2)*)—What Evidence Requires Instruction Stated.—Whenever there is evidence before a jury that would support a verdict upon a motion to set it aside, the court is obliged to instruct, if requested to do so.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 627 et seq.]

8. Principal and Agent (§ 89 (10)*)—Evidence Held Not to Require Instruction on Illegality of Contract.—In an agent's action for commission on sale of horses, evidence held insufficient to require the court to instruct as to the illegality of an agreement for contingent compensation for exerting personal influence with foreign government agents or inspectors.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 244 et seq.]

9. Trial (§ 252 (2)*)—Court May Determine Whether Evidence Justifies Instruction.—Trial courts may pass on evidence to the extent of ascertaining whether there is sufficient evidence to justify an instruction.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 712, 718.]

10. Trial (§ 252 (16)*)—Instruction Permitting Jury to Avoid Contract on Any Ground Held Properly Rejected.—An instruction giving the jury sweeping and indefinite authority to avoid the parties' agreement on any ground held properly refused.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 718.]

11. Trial (§ 228 (2)*)—Direction to Consider Instruction with Others on Different Subjects Misleading.—A direction to consider an instruction in connection with others upon totally different subjects, being confusing and misleading, was properly rejected.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 727.]

12. Principal and Agent (§ 9*)—That Contract More Profitable to One Party Than Other Immaterial.—Where both parties anticipated profit from their contract for the sale of horses for a commission, that it was more profitable to one, than to the other is not a sufficient reason for avoiding the whole or part of the contract.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 266.]

13. Principal and Agent (§ 9*)—Contract for Commission Held Not

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Unconscionable.—Where plaintiff contracted to sell horses for defendant at a price per head, and more than 20,000 were sold, there was consideration for the commission, and, there being no inequality to shock the conscience, the court will leave the parties to their bargain in the absence of fraud, mistake, etc.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 266.]

14. Principal and Agent (§ 89 (10)*)—Offered Instruction on Split Commission Not Supported by Evidence.—In an agent's action for commission for sale of horses to parties having contracts with government, an instruction raising the question of split commissions with the government subagent held properly refused for lack of supporting evidence.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 266.]

15. Trial (§ 253 (10)*)—Instructions Held Not Improper as Ignoring Defendant's Theory.—Where plaintiff sued to recover a commission of \$5 per head for horses sold, and the jury were instructed that, if they believed their contract had been superseded by a \$1 per horse contract, they could so find, the defendants may not complain that the evidence showing the \$1 basis of compensation was ignored, since the jury would have applied the same principles on either finding as to amount of commissions.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 266.]

16. Appeal and Error (§ 1002*)—Verdict on Disputed Facts Conclusive.—The Supreme Court is bound by the verdict of a jury on disputed facts upon which they were fully and properly instructed.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 620.]

Error to Law and Equity Court of City of Richmond.

Action in assumpsit by Seton R. Beresford against the Smyth Bros.-McCleary-McClellan Company. The court refused to set aside the verdict for plaintiff, and the defendants bring error. Affirmed.

George Bryan and Smith & Gordon, all of Richmond, for plaintiffs in error.

Williams & Mullen, of Richmond, for defendant in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.